

HOME SECOND DEED OF TRUST

Return To:

Tax Map Reference #:

RPC/Parcel ID #

IDIS# _____

Prepared By :

[Space above Line for Recording Data]_____
Address_____
City, State, Zip Code

PURSUANT TO SECTION 55-58.3.D OF THE VIRGINIA CODE, THIS DEED OF TRUST SHALL NOT, WITHOUT THE CONSENT OF THE SECURED PARTY HEREUNDER, BE SUBORDINATED UPON THE REFINANCE OF ANY PRIOR MORTGAGE.

THIS DEED OF TRUST IS EXEMPT FROM RECORDATION TAXES UNDER VIRGINIA CODE SECTIONS 58.801 AND 58.1-803 AND IS CLAIMED UNDER VIRGINIA CODE SECTION 58.1-811 AND 42 U.S.C. 1490(h)

**Second Deed of Trust
Virginia Department of Housing and Community Development
HOME Funds**

THIS DEED OF TRUST dated this _____ day of _____, _____, is given by _____

(herein referred to collectively as "Grantor") to Willie Fobbs, III, Associate Director of the Virginia Department of Housing and Community Development, as trustee (herein referred to as the "Trustee") whose business address is 600 East Main Street, Suite 1100, Richmond, Virginia 23219, for the benefit of the VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (DHCD), 600 East Main Street, Suite 1100, Richmond, Virginia 23219, as beneficiary. Whenever herein used, the singular form shall include plural and the plural shall include the singular, as may be appropriate in the circumstances.

NOW THEREFORE in consideration of the sum of \$10.00 cash in hand paid at settlement, the receipt of which is hereby acknowledged, the Grantor does bargain, sell, grant, and convey with the usual English Covenants and General Warranty of Title the following described property unto said Trustee, to wit:

SEE SCHEDULE "A"

IN TRUST NEVERTHELESS, to secure the payment of the Grantor's obligations and indebtedness to the VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, including all extensions, renewals or additional advancements thereupon, which indebtedness shall be evidenced by one or more promissory notes which refer to this Deed of Trust, including but not limited to the following described obligations, to wit:

Article 1 Affordable Housing Covenants

The sale and use of each HOME-assisted Affordable Housing Unit ("HOME-assisted Unit") subject to this Deed of Trust is governed by regulations governing controls on affordability and occupancy ("Affordability Period"), which are governed by the requirements of the HOME Program 24 CFR Part 92, *et seq.* ("HOME Regulations"). Consistent with the HOME Regulations, the following covenants (the "Covenants") shall run with the land, for each respective purchaser of the HOME-assisted Affordable Housing Unit referenced herein, for the period of time commencing upon the earlier of (a) the date hereof or (b) the prior commencement of the "Affordability Period", as that term is defined in the HOME Regulations, and terminating upon the expiration of the Affordability Period as provided in those same Regulations.

- A. The Department of Housing and Community Development (The "Department") and the Commonwealth of VA, collectively appoint as an Administrative Agent: **(Name of the issuing Local Administrator)**
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- B. The homebuyer(s) may prepay the whole unpaid balance of this indebtedness at any time without penalty. **However**, the provisions of the HOME homebuyer agreement will not be released during the affordability period.
- C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt (collectively, "Debt") secured by the HOME-assisted Unit, may be incurred except as approved in advance and in writing by the Department in accordance with the HOMEownership Down Payment and Closing Cost Assistance Program. At no time shall the Local Administrator approve any such debt. If there is a refinance of the property during the Affordability Period, the state will recapture, from the available net proceeds, the entire amount of the HOME investment from the homebuyer. If there are no net proceeds or the net proceeds are insufficient to repay the HOME investment due, the state can only recapture the amount of the net proceeds, if any. Net proceeds are defined as the sales price minus superior loan repayment (other than HOME funds) and any closing costs.
- D. *Recapture*: Homebuyers are subject to recapture restrictions to ensure that the home remains affordable consistent with the applicable period of affordability. DHCD's program design incorporates the recapture provision consistent with the standards in the HUD HOME Investment Partnerships Program Final Rule 24 CFR 92.254.

If the homebuyer sells or transfers title of the HOME assisted property, either voluntarily or involuntarily, during the Period of Affordability, the state will recapture, from the available net proceeds, the entire amount of the HOME investment from the homebuyer. If there are no net proceeds or the net proceeds are insufficient to repay the HOME investment due, the state can only recapture the amount of the net proceeds, if any. The net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs.

The recapture provision applies to all properties that receive down payment or closing cost assistance through this program, even loans that are assumable. If a homebuyer assisted through this program allows the property to be assumed by another party prior to the end of the affordability period the total amount of assistance will be recaptured and returned to DHCD.

The forgivable HOME loan IS NOT Assumable. If the new homebuyer receives an Assumable 1st lien position primary mortgage giving the original homebuyer the right to assign the unpaid balance of his obligation, without prepayment penalty, to another person upon sale of the mortgaged property, the forgivable HOME loan MAY NOT be assumed and the recapture provision is triggered. The state will recapture, from the available net proceeds, the entire amount of the HOME investment from the original homebuyer.

- E. *Repayment:* The owner of the HOME-assisted Unit shall at all times maintain the Affordable Unit as his or her principal place of residence during the Period of Affordability. At no time shall the owner of the HOME-assisted Unit lease or rent the Affordable Unit to any person or persons. Failure of the homebuyer to occupy the HOME assisted unit as his or her principal residence (i.e., unit is rented or vacant) will trigger the *repayment* of the entire outstanding HOME investment. DHCD will attempt to bring the property back into compliance by having the homebuyer re-occupy the property. If re-occupancy fails, the homebuyer is required to repay the entire HOME investment back to the state of VA.
- F. The housing must be single-family, 1-2 units. If two units, one of the units must be owner-occupied and the second unit must be a HOME-assisted rental unit. The rental requirements that apply include the rent must be restricted to someone below 80% of area median income, the maximum rent is the High HOME rent minus tenant paid utilities, there must be an executed lease that is for one-year and does not contain prohibited lease provisions, and the unit must meet housing quality standards (HQS) unless there is a local housing code that is more restrictive on occupancy. The income-certified low-income households must be approved in writing by the Local Administrator, with approval from the Department, and homebuyer shall submit for written approval of the Local Administrator and the Department copies of all proposed leases prior to having them signed by any proposed tenant.
- G. No improvements may be made to the HOME-assisted Unit that would reduce its bedroom configuration.
- H. The affordable housing covenants, declarations and restrictions implemented by this Deed of Trust and by incorporation of the Commonwealth of Virginia, or the U.S. Department of Housing and Urban Development 24 CFR Part 92 *et seq.*, shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to

the HOME-assisted Unit so long as the Unit remains subject to the affordability controls being implemented by this Deed of Trust. However, in the case of a mortgage loan insured by the Federal Housing Administration ("FHA") as governed by 24 CFR Section 203.41 and *FHA Mortgagee Letter 94-2*, all restrictions identified in this document shall automatically terminate if title to the mortgaged property is transferred by foreclosure, deed-in-lieu of foreclosure, or if the mortgage is assigned to the Secretary.

- I. This Deed of Trust, in the principal sum of the DEFERRED HOME FORGIVABLE LOAN in the amount of \$ _____, with no interest as agreed there upon, shall be forgiven so long as the Grantor occupies the property as their primary residence over the entire Period of Affordability assigned to the said forgivable HOME loan.
- J. The HOME-assisted Unit(s) are subject to a _____ year affordability control period that commenced on the date of first conveyance of title, which is _____, of this HOME-assisted Unit governed by this Deed of Trust to a certified low-income purchaser who has executed the documents required by the HOMEownership Down Payment and Closing Cost Assistance Program.

Article 2 Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Commonwealth and to the public, in light of the public policies set forth in the National Affordable Housing Act of 1990, and the obligation for the provision of low and moderate-income housing receiving federal HOME assistance in accordance with 24 CFR Part 92. Accordingly:

- A. In the event of a threatened breach of any of the Covenants by the Grantor, or any successor in interest or other owner of the HOME-assisted Unit, the Commonwealth of Virginia shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.
- B. Upon the occurrence of a breach of any Covenants by the Grantor, or any successor in interest or other owner of the Property, the Commonwealth of Virginia shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, or entry on the premises.

The Grantor hereby consents to foreclosure by the Trustee named herein in the event of a Default, notwithstanding that the Trustee may have supplied legal advice to or represented the Grantor in this transaction. For services as Trustee in the event of a sale hereunder, the Trustee shall be entitled to compensation in the amount equal to FIVE PERCENT (5%) of the gross amount realized at any such sale, together with any costs incurred by the Trustee in effectuating said sale, which shall be deducted from the proceeds of the sale.

ADVERTISEMENT REQUIRED: Publication of notices of sale once a week for two successive weeks in any newspaper of general circulation or published in the City or County where the property is located. Said sale may be held not less than eight (8) days following the first advertisement and not more than thirty (30) days following the last advertisement.

INSURANCE REQUIRED: THE GRANTOR COVENANTS to purchase and maintain fire and casualty insurance on the improvements situated upon the property in the amount of not less than the full amount of the obligations hereby secured, the policies of which shall bear loss payable clauses to said Trustee or to the other holders of the obligations for the future securing of said obligations.

THE GRANTOR FURTHER COVENANTS to promptly pay, when due, all taxes, levies, and assessments upon the property conveyed.

SUBSTITUTION OF TRUSTEE IS PERMITTED at the discretion of the beneficiary for any reason whatsoever, by an instrument in writing, duly executed, acknowledged, and recorded wherever this Deed of Trust is recorded. Any substitute Trustee hereafter appointed shall thereupon become vested with, and succeed to, all the title, power, and duties hereby conferred upon the Trustee named herein, the same as if the substitute Trustee has been named the original Trustee by this instrument.

THIS COVENANT IS MADE under and subject to the provisions of Sections 55-59, 55-59.1 through 55-59.4 inclusive, and 55-60 of the Code of Virginia's (1950) as amended, and unless this Deed of Trust states otherwise, it shall be construed to impose and confer upon the parties hereto and the beneficiaries hereunder all the duties, rights, and obligations prescribed in said Sections 55-59 through 55-60, inclusive. And in short form, as said sections provided, Grantor and Trustee further agree as follows:

1. Exemptions waived
2. Renewal, extensions or reinstatement permitted
3. Right of anticipation reserved, as set forth in the obligations secured
4. Subject to all upon default
5. Any Trustee may act.

THE DEBT(S) SECURED HEREBY ARE SUBJECT TO CALL IN FULL
THE TERMS THEREOF IN THE EVENT OF ANY SALE, TRANSFER,
GIFT, OR CONVEYANCE OR ANY INTEREST IN THE PROPERTY HEREBY SECURED,
OR ANY PORTION THEREOF.

WITNESSETH the following signatures and seals this day and year first above written,

(Grantor)

(Grantor)

State of _____
City/County of _____

I, _____, a Notary Public
in the State of Virginia at Large, do certify that _____,
whose name is signed to the foregoing Deed of Trust dated _____, has
personally appeared and acknowledged the same before me in the State and City aforesaid.
Given under my hand this ____ day of _____, 20____.

NOTARY PUBLIC

Notary # _____

My commission expires: _____

SCHEDULE A
(Property Description, to include Legal address and Street address)